FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.372 OF 2006

Smt.Surekha Dnyaneshwar Sonawane ..Petitioner
V/s.
The Commissioner of Police & Ors. ..Respondents

Mr.S.R.Chitnis, Sr.Counsel for the petitioner.

Mrs.M.H.Mhatre, APP for the Respondent/State.

Coram : R.S.Mohite,J

Date : 22.2.2006.

PC.

1. Rule. By consent, rule made returnable forthwith.

2. The petition impugns an order dated 10.1.2006 passed by the JMFC, CBD, Navi Mumbai, granting permission to conduct brain mapping test and lie detection test on one Mohan Sonawane as well as on the petitioner.

3. The brief facts of the case are as follows :-

. One Dnyaneshwar Sonawane who is the husband of the present petitioner was killed on 8.10.2002. On the same day, an FIR was lodged by the present

petitioner who claimed to be an eye witness. The police investigated the matter and 4 persons by name Sandesh Kesarkar, Mohan Sopate, Bharat Kelkar and Ashok Vidhate were arrested by the police on 20.10.2002 in C.R.No.228/2002 registered by the Rabale police station for offences punishable under Sections 302, 449, 143, 144, 147 148 and 149 of IPC. During the trial, no application was made by the investigating agency for any additional investigation under Section 173(8) of Cr.P.C. Ultimately, after the full-fledged trial, all the 4 accused persons came to be acquitted by the Sessions Judge, Thane, on 16.8.2003.

4. From the papers produced before me by the learned APP, it appears that after about 2 years of the acquittal of the accused persons in the said crime, one Mohan Sonawane who claimed to be the real uncle of the deceased wrote a letter to the President, Human Rights Commission, Mumbai alleging that he had come to know that the petitioner herself had planned her husband’s murder. The letter is silent as to when he came to know that the petitioner was responsible for the murder of her husband. Allegations are also made against Milind Jadhav and Vilas as being persons who were also responsible for the crime. He claimed to have made an application to Rabale police station for investigation as also an application to the Chief

Minister and Home Minister for re-investigating the said crime. Learned APP concedes that all the applications made by Mohan Sonawane were submitted after the conclusion of the trial wherein the accused were acquitted. Mr.Mohan Sonawane also contended in the application that he had made some application to the Commissioner of Police, Navi Mumbai and Bombay. According to him, the investigating officer Ashok Jagtap had worked in favour of the accused persons. He sought justice from the Human Rights Commission. He however, did not mention in this letter that the accused persons in the said crime had already been acquitted after a full fledged trial.

5. It appears that on 18.10.2005 the Acting Chair Person of the Maharashtra State, Human Rights Commission, probably un-aware of the fact that the trial has concluded and resulted in an acquittal of the accused, passed an order recording the allegations in the complaint and transmitting the complaint to the Commissioner, Navi Mumbai for disposal in accordance with law.

6. It appears that thereafter on 10.1.2006 the ACP, Vashi division, Navi Mumbai filed an application before the JMFC, CBD, Navi Mumbai seeking his permission to conduct a brain mapping test as well as a lie detection test on the petitioner and Mohan

Sonawane. Learned APP states that this application was made merely on the footing that the Human Rights Commission had transmitted the complaint of Mohan Sonawane to the Police Commissioner. On taking instructions from API Fadtare attached to Rabale police station, who is present in the Court, learned APP states that after the receipt of the order of the Human Rights Commission, no preliminery investigation of any nature was conducted to verify the truth of the allegation contained in the complaint of Mohan Sonawane dated 3.8.2005. It is also an admitted position that no fresh FIR has been registered by the police and thus there is no new crime registered by the police.

7. The application dated 10.1.2006 was clearly made on the footing that the old C.R.No.228/2002 had been re-opened for the investigation.

8. In my view, the said C.R.No.228/2002 cannot survive the conclusion of the full fledged trial which has resulted in an acquittal. The only power which enables re-investigation is the power conferred by section 173(8) of Cr.P.C. Such additional investigation is obviously for the purpose of the trial of the accused to be held before the Court. Once the trial itself is concluded, there would be no legal sanction for investigating the said case by the police. In the

present case, the police have not registered a fresh crime against the petitioner on the basis of any further facts, the truth of which have been ascertained. The petitioner is therefore, neither an accused nor a witness in any case. In the circumstances, the passing of an order by the Magistrate granting permission to conduct a brain mapping test as well as a lie detection test on the petitioner is not passed in any pending crime which is under investigation. It appears that the police authorities have moved this application in respect of both, Mohan Sonawane as well as the present petitioner without registering any FIR under Section 154 of Cr.P.C. The learned APP is not in a position to point out any provision or law under which the Magistrate can grant permission for conducting of such tests on the person who is neither an accused nor a witness and against whom there is no crime registered by the police for any offence.

9. In the peculiar facts & circumstances of this case, the impugned order will have to be quashed and set aside. The impugned order dated 10.1.2006 passed by the JMFC, CBD, Navi Mumbai is therefore, quashed and set aside. APP states that in case a lie detection test or brain mapping test is required to be conducted on the petitioner if and when any crime is registered against the present petitioner, 72 hours written notice will be given to the

petitioner. The statement is accepted. Rule made absolute in the above terms.

(R.S.Mohite,J)